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Patent and Trademark Office

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/474,146 06/07/95 HARVEY

J 5634.186

EXAMINER

LM61/0331

THOMAS J SCOTT JR
HOWREY & SIMON
1299 PENNSYLVANIA AVENUE NW
WASHINGTON DC 20004

WEAVER, S

ART UNIT

PAPER NUMBER

2742
DATE MAILED:

15
03/31/98

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
08/474,146

Applicant(s)
Harvey et al.

Examiner
Scott L. Weaver

Group Art Unit
2742



☒ Responsive to communication(s) filed on Jul 1, 797

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 2-20 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 2-20 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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DETAILED ACTION

1. This Office Action is responsive to the amendment(s) filed 7/7/97.

DOUBLE PATENTING V.S. PATENTS

2. In view of further analysis and applicant's arguments, the rejection of the claims in the instant application under double patenting based on the broad analysis of *In re Schneller* as set forth in paragraphs 7-10 of the previous Office Action has been withdrawn.

3. The non-statutory double patenting rejection, whether of the obviousness-type or non-obviousness-type, is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985) *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a non-statutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

DOUBLE PATENTING BETWEEN APPLICATIONS

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4. Conflicts exist between claims of the following related co-pending applications which includes the present application:

#	Ser. No.	#	Ser. No.	#	Ser. No.
1	397371	2	397582	3	397636
4	435757	5	435758	6	437044
7	437045	8	437629	9	437635
10	437791	11	437819	12	437864
13	437887	14	437937	15	438011
16	438206	17	438216	18	438659
19	439668	20	439670	21	440657
22	440837	23	441027	24	441033
25	441575	26	441577	27	441701
28	441749	29	441821	30	441880
31	441942	32	441996	33	442165
34	442327	35	442335	36	442369
37	442383	38	442505	39	442507
40	444643	41	444756	42	444757
43	444758	44	444781	45	444786
46	444787	47	444788	48	444887
49	445045	50	445054	51	445290

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52	445294	53	445296	54	445328
55	446123	56	446124	57	446429
58	446430	59	446431	60	446432
61	446494	62	446553	63	446579
64	447380	65	447414	66	447415
67	447416	68	447446	69	447447
70	447448	71	447449	72	447496
73	447502	74	447529	75	447611
76	447621	77	447679	78	447711
79	447712	80	447724	81	447726
82	447826	83	447908	84	447938
85	447974	86	447977	87	448099
88	448116	89	448141	90	448143
91	448175	92	448251	93	448309
94	448326	95	448643	96	448644
97	448662	98	448667	99	448794
100	448810	101	448833	102	448915
103	448916	104	448917	105	448976
106	448977	107	448978	108	448979
109	449097	110	449110	111	449248
112	449263	113	449281	114	449291

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115	449302	116	449351	117	449369
118	449411	119	449413	120	449523
121	449530	122	449531	123	449532
124	449652	125	449697	126	449702
127	449717	128	449718	129	449798
130	449800	131	449829	132	449867
133	449901	134	450680	135	451203
136	451377	137	451496	138	451746
139	452395	140	458566	141	458699
142	458760	143	459216	144	459217
145	459218	146	459506	147	459507
148	459521	149	459522	150	459788
151	460043	152	460081	153	460085
154	460120	155	460187	156	460240
157	460256	158	460274	159	460387
160	460394	161	460401	162	460556
163	460557	164	460591	165	460592
166	460634	167	460642	168	460668
169	460677	170	460711	171	460713
172	460743	173	460765	174	460766
175	460770	176	460793	177	460817

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178	466887	179	466888	180	466890
181	466894	182	467045	183	467904
184	468044	185	468323	186	468324
187	468641	188	468736	189	468994
190	469056	191	469059	192	469078
193	469103	194	469106	195	469107
196	469108	197	469109	198	469355
199	469496	200	469517	201	469612
202	469623	203	469624	204	469626
205	470051	206	470052	207	470053
208	470054	209	470236	210	470447
211	470448	212	470476	213	470570
214	470571	215	471024	216	471191
217	471238	218	471239	219	471240
220	472066	221	472399	222	472462
223	472980	224	473213	225	473224
226	473484	227	473927	228	473996
229	473997	230	473998	231	473999
232	474119	233	474139	234	474145
235	474146	236	474147	237	474496
238	474674	239	474963	240	474964

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241	475341	242	475342	243	477547
244	477564	245	477570	246	477660
247	477711	248	477712	249	477805
250	477955	251	478044	252	478107
253	478544	254	478633	255	478767
256	478794	257	478858	258	478864
259	478908	260	479042	261	479215
262	479216	263	479217	264	479374
265	479375	266	479414	267	479523
268	479524	269	479667	270	480059
271	480060	272	480383	273	480392
274	480740	275	481074	276	482573
277	482574	278	482857	279	483054
280	483169	281	483174	282	483269
283	483980	284	484275	285	484276
286	484858	287	484865	288	485282
289	485283	290	485507	291	485775
292	486258	293	486259	294	486265
295	486266	296	486297	297	487155
298	487397	299	487408	300	487410
301	487411	302	487428	303	487506

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304	487516	305	487526	306	487536
307	487546	308	487556	309	487565
310	487649	311	487851	312	487895
313	487980	314	487981	315	487982
316	487984	317	488032	318	488058
319	488378	320	488383	321	488436
322	488438	323	488439	324	488619
325	488620	326	498002	327	511491
328	485773	329	113329		

5. 37 CFR 1.78(b) provides that when two or more applications filed by the same applicant contain conflicting claims, elimination of such claims from all but one application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application. The attached Appendix provides clear evidence that such conflicting claims exist between the 329 related co-pending applications identified above. However, an analysis of all claims in the 329 related co-pending applications would be an extreme burden on the Office requiring millions of claim comparisons.

In order to resolve the conflict between applications, applicant is required to either:

- (1) file terminal disclaimers in each of the related 329 applications terminally disclaiming each of the other 329 applications, or;

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- (2) provide an affidavit attesting to the fact that all claims in the 329 applications have been reviewed by applicant and that no conflicting claims exists between the applications. Applicant should provide all relevant factual information including the specific steps taken to insure that no conflicting claims exist between the applications, or;
- (3) resolve all conflicts between claims in the above identified 329 applications by identifying how all the claims in the instant application are distinct and separate inventions from all the claims in the above identified 329 applications (note: the five examples in the attached Appendix are merely illustrative of the overall problem. Only correcting the five identified conflicts would not satisfy the requirement).

Failure to comply with the above requirement will result in abandonment of the application.

INFORMATION DISCLOSURE STATEMENTS

6. Receipt is acknowledged of applicant's Information Disclosure Statements filed 4/7/97. In view of the unusually large number of references cited in the instant application (approximately 2,200 originally and 645 in the subsequent IDS) and the failure of applicant to point out why such a large number of references is warranted, these references have been considered in accordance with 37 C.F.R. 1.97 and 1.98 to the best ability by the examiner with the time and resources available.

The foreign language references cited therein where there is no statement of relevance or no translation are not in compliance with 37 C.F.R. 1.98 and have not been considered.

Numerous references listed in the IDS are subsequent to applicant's latest effective filing date of

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9/11/87, therefore, the relevancy of these references is unclear. Also cited are numerous references that are apparently unrelated to the subject matter of the instant invention such as: US Patent # 33,189 directed toward a beehive, GB 1565319 directed toward a chemical compound, a cover sheet with only the word "ZING", a computer printout from a library search with the words "LST" on it and a page of business cards including that of co-inventor James Cuddihy, among others. The relevancy of these references cannot be ascertained. Furthermore, there are several database search results listed in foreign languages (such as German) which list only the title and document information; no copy has been provided, therefore, these references have not been considered.

CLAIM REJECTIONS - 35 USC § 112

7. Claims 2-20 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

37 C.F.R. 1.75(d)(1) requires that:

"the terms and the phrases used in the claims must find clear support or antecedent basis in the description so that the meaning of the terms in the claims may be ascertainable by reference to the description".

The following limitations were not supported by the specification as originally filed:

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In claim 2, 'receiving a first "instruct signal" effective to ...supplement or complete' television programming, selecting one of 'a time at which to communicate the first instruct signal' and a 'location to which to communicate the first instruct signal';

In claim 3, embedding a code or datum in television programming that 'enables the computer to locate some processor code or control a presentation ... in accordance with the first instruct signal', storing "information to evidence an availability, use, or usage of the television programing, the first instruct signal or some processor code", the 'second instruct signal' effective to process data to generate output to 'form the basis for the supplementation or completion', or effective... to process "a digital television signal".

In claims 3 and 5, each and every one of the possible evidences is not supported.

In claims 4, each and every one of the possible steps is not supported.

In claims 6 and 15, each and every one of the second group including a 'unit of computer software in the television signal', a datum specifying 'where when or how to locate a signal', a 'fashion for identifying', 'a communication schedule'.

In claim 7, each and every one of the "second instruct signals" designated.

In claim 8, the 'effect to instruct the user station processor" to 'supplement or complete' the program, 'encoding the instruction with the effect'.

In claim 9, 'the second control signal' and its claimed function.

In claim 11, each and every function ? of the second instruct signal can not be determined to exist in the specification.

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In claim 12, embedding 'said control signal' to perform each suggested function and 'communicating a 'program unit identification code', and 'some information to evidence an availability, use or usage of the program'.

In claim 13, receiving a 'data file' or 'unit of mass media programming', "instruct signals" effective to store or present as claimed.

In claim 14, each and every one of the possible effects of the communicating and storing.

In claim 16, each and every one of the evidence information which designates or identifies the listed program, station , system, network, signal, indication.

In claim 17, the 'downloadable code and 'selecting a control signal' which control signal is one of the many possible phrased designation and each and every of the signals, designations, controls, governors as listed an not be identified in the specification.

In claims 18, 19, , the output apparatus 'effective to supplement or complete the mass media program materials based on stored data'.

Consider especially in the claims which provide one or more of a possible list of functions, steps, effects, that each and every one of the previous listed functions steps, effects must be disclosed to be effective and enabling with a subsequently provided list of functions, steps, effects, Consider for example claim 4 provides at least one of the steps presented, while subsequent claims 5, 6, and 7 provide a multiple number of combinations of possible instructions, designations which must have been disclosed as being enabling in combination with each and every of the previous possible combinations, functions, steps, effects,. Claim 3 presents 2 possibilities, claims 4 presents an additional 12 evidences, thus 24 different combinations, claim 7 provides 25 possible instructions,

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thus 50 possible combinations, each and every one of the first selecting step of claim 3 can not be found in combination with each and every one of the subsequent evidences of claim 5, selections of claim 6, and selections of claim 7.

8. Claims 8-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 8, on (ln.9) reference is to “encoding the instruction” to a first control signal “with said effect” which ‘effect’ on (ln.4) is ‘caused’ by the instruction, it is not clear what the term ‘effect’ is meant to imply by such function. Further the phrase ‘first control signal’ implies there is a second but no second signal is presented in the claim thus providing uncertainty as to whether the ‘first’ does or does not mean a ‘second’ signal exists. In claim 12, only “said control signal” is referred to thus supporting the confusion above.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who

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has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

10. Claims 3-17 are rejected under 35 U.S.C. 102(e) as being anticipated by Jeffers et al. (#4,739,510)

The claims read on Jeffers as follows: Jeffers taught, with respect to claim 3, a method of processing signals to control a television or multimedia presentation (col.1,ln.7-27; col.1,ln.59-col.2,ln.5; col.3,ln.61-col.4,ln.15), the method comprised steps of receiving a television signal containing television programming and communicating the television signal to a storage device (col.4,ln.16-40, col.4,ln.55-62), receiving a first instruct signal effective to instruct a computer in a manner of presenting the television programming at an output device (col.4,ln.1-8); selection of a location to which to communicate the first instruct signal (the signals were addressable via col.3,ln.61-col.4,ln.15), communication of the first instruct signal to the selected location (col.4,ln.16-27), and storing the television signal and the instruct signal at the storage device (col.4,ln.16-40; col.4,ln.55-62). With respect to claim 4, Jeffers taught the method further comprised embedding the first instruct signal in the television signal (col.3,ln.53-55; col.4,ln.67-col.5,ln.2; col.8,ln.48-59). With respect to claim 5, Jeffers taught the selected location is in the television signal (the address of the receiver was embedded in the signal via col.4,ln.16-50) and the method further comprised storing some information at the storage device that evidenced a channel on a cable system (col.6,ln.21-24). With respect to claim 6, Jeffers taught the first instruct signal was embedded in the television signal (col.4,ln.67-col.5,ln.2) and the method further comprised selecting a datum that designates an addressed apparatus (col.4,ln.46-50; col.6,ln.31-36) and embedding the selected one signal in the television signal (col.6,ln.4-8).

With respect to claim 7, Jeffers taught the first instruct signal comprised executable code (col.4,ln.16-50) and the method further comprised selecting a second instruct signal (plural message types were referred to via figures 4-6), the second instruct signal being an instruction signal that controls a multimedia presentation (col.6,ln.25-30) and which selected second instruct signal was embedded in the television signal (col.6,ln.18-19). With respect to claim 8, Jeffers taught a method of generating and encoding signals to control a presentation (col.3,ln.41-

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col.4,ln.15), the method comprised steps of receiving and storing a program that contained video information (col.4,ln.30-40, col.4,ln.55-62), receiving an instruction which effectively instructed a processor to generate or output some user specific information to supplement a program (via impulse pay per view dat for example col.6,ln.17-19; col.11,ln.3-38, col.11,ln.44-58), encoding the instruction by translating the instruction to a control signal which directed a processor at a user station to perform the effect indicated by the instruction with the program (for example blocking, unblocking access col.8,ln.42-54), and storing the control signal from the step of encoding in conjunction with the program (col.7,ln.5-30, 37-49; col.10,ln.5-16). With respect to claims 9 and 10, Jeffers further taught supplemental program material was stored at the same location as the processor (the data for display and control was received and stored as noted above via col.4) and the control signal directed the processor to generate a video overlay coordinated with the video information in the program (col.17,ln.40-53, col.17,ln.48-51 via describing impulse pay per view transactions), with respect to claim 9, Jeffers taught the method included storing the supplemental program material in conjunction with the program material (further for example by reference to subscription tier authorization col.18,ln.54-col.19,ln.3 or credit/debit value for transactions via col.19,ln.32-36). Further with respect to claim 10, Jeffers taught transmitting a combined video signal from the program and the video overlay generated by the processor to a co-located video display (col.21,ln.65-col.22,ln.10). With respect to claim 11, Jeffers taught the method included receiving a second instruction which was effective at a user station to control a user station to receive information to supplement the program (col.20,ln.40-49), the second instruction was encoded (as described above and as were all addressed signals broadcast and which signals functioned to control the processor in the manner in which was as noted above as well as was such instruction also stored via the noted above col.4). With respect to claim 12, Jeffers taught the method further included embedding a code in the program that enabled a computer or controller to control presentation of the program in accordance with the control signal (col.3,ln.41-col.4,ln.27). With respect to claim 13, Jeffers taught a method of processing signals to control a mass medium programming presentation which comprised steps of receiving a signal containing a unit of mass medium programming and communicating the signal to a storage

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device (col.4,ln.16-40, col.4,ln.55-62), receiving one or more instruct signals effective to communicate the signal to a transmitter at a transmitter of cablecast transmitter station (figure 1, col.2,ln.18-27, col.18,ln.27-54) and control a receiver station to store the signal or present information contained in the signal at an output device (the receiver station output devices), communication of the one or more instruct signals to the storage device (col.4,ln.37-40) which was stored in association with the unit of mass medium programming. With respect to claim 14, the unit of mass medium programming comprised video, audio, or text, and the one or more instruct signals were embedded in a television signal (col.8,ln.48-54). With respect to claim 15, Jeffers taught a datum that designated an addressed apparatus was selected and embedded in the programming signal (col.4,ln.19-20, col.4,ln.30-50). With respect to claim 16, Jeffers taught a step of storing some information at the storage device to evidence an availability of the one or more instruct signals (the signals were received and stored), the evidence information designated a mass medium program (via program identification data col.5,ln.56-61 or via impulse pay per view data via col.6,ln.15-36). With respect to claim 17, Jeffers taught the one or more instruct signals were downloadable and executable by the use of receiving, storing, and processing in accordance therewith and the method further comprised selecting an instruction to embed in the programming signal (which was an instruct to decrypt signal that designated a way to decrypt (col.4,ln.51-54, col.7,ln.45-49).

11. Claims 18-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Pargée, Jr. (#4,422,093).

The claims read on Pargée, Jr. as follows: Pargée, Jr. taught with respect to claim 18, an apparatus for providing a mass medium programming presentation (figures 1, 2, 3, 4,) which included an output device for outputting a mass medium programming presentation to a user (44, figure 3), a storage device (41 figure 3) operatively connected to the output device via a control signal detector (54 figure 4) for detecting the one or more embedded instruct signals, the storage device for storing and communicating mass medium program material and one or more embedded instruct signals (col.7,ln.44-55), and a processor (47 figure 4) operatively connected to the

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storage device, the output device, the control signal detector, for processing data and controlling the storage device and the output device to output mass medium program material in accordance with the embedded instruct signals (col.7,ln.31-55). With respect to claim 19, Pargée, Jr. taught a transmitter station apparatus (figures 1, 2) comprised of a transmitter (9, figure 1, 2) for transmitting a mass medium programming signal, a storage device operatively connected to the transmitter for storing and outputting mass medium program materials and one or more instruct signals (8, figure 2, col.5,ln.34-51), a control signal detector operatively connected to the storage device for detecting the one or more control signals (control and status conductor and I/O 33 via col.5,ln.60-68) and a computer operatively connected to the storage device and the control signal detector for controlling communication of the one or more instruct signals from the storage device to the transmitter (14, col.5,ln.46-59). With respect to claim 20, Pargée, Jr. taught the transmitter station included a signal generator (30 via col.5,ln.26-39) operatively connected to the transmitter and the computer for receiving the one or more instruct signals and embedding the one or more instruct signals in mass medium programming signals.

12. With respect to applicants arguments, due to the lack of definite support for the claimed subject matter, and especially lack of support with the suggested filing data of the 4,694,490 patent, the effective filing date can not be accorded as being any earlier than 9/11/87 which is the parent application effective filing date. The remarks indicate that suggested support for the claimed subject matter with for example a footnote to the 490' patent referring to for example 58 lines of the patent (col.3,ln.48-col.4,ln.30) "corresponds to the '87 Specification at pages 11-14, 16, 40-43, 248, 427-429, 447-457... continuing with a total of some 41 pages of information. Thus it is considered that the '490 information has been 'stretched' in such manner as to provide question as to proper support for all that is now being claimed. With respect to the suggestion that the "Webster's II New College dictionary" provides further elaboration on what was intended by the specification of the '490 patent cannot be accepted, the definition must have been from the time prior to the filing of the application, such is not clear, nor can anything in the specification be

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further exemplified or modified without raising issue of new matter. As such the Jeffers and Pargée references as applied above are deemed to be appropriate to teach that which is claimed at this time. Especially with respect to the Pargée effective filing date, even if the applicant show complete and definite support for each and every term presented via claims 18-20, the Pargée reference has an earlier effective filing date than the '490 patent. With respect to the differences noted the "supplement or complete" is merely outputting something, a frame supplements the program.

13. Applicant's arguments with respect to claims 2-20 have been considered but are moot in view of the new ground(s) of rejection.

14. **Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks
Washington, D.C. 20231

or faxed to:

(703) 308-9051, (for formal communications intended for entry)

Or:


(703) 308-5403 (for informal or draft communications, please label
"PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive,
Arlington, VA., Sixth Floor (Receptionist).

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott L. Weaver whose telephone number is (703) 308-6974. The examiner can normally be reached on Monday through Friday from 8:00 A.M. to 6:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Krista M. Zele, can be reached on (703) 305-4701. The fax phone number for this Group is (703) 308-5403.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-3900.


SCOTT L. WEAVER
PATENT EXAMINER
Pr. noy
Group 2700